

# **Ex. 5 - Deliberative**

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----- Forwarded message -----

From: "**Curt Guyette**" <[cguyette@aclumich.org](mailto:cguyette@aclumich.org)>

Date: Tue, Sep 22, 2015 at 4:01 PM -0700

Subject: Re: Lead and Copper Rule Compliance testing questions

To: "Kelley, Jeff" <[kelley.jeff@epa.gov](mailto:kelley.jeff@epa.gov)>

Thanks for this. There is just one point I want to make sure is clarified for certain. Based on my reading of what you sent, this is the situation:

Even though Flint is under 100,000, if they collected 100 samples during the first round, the city is still required to collect 100 samples for the second round no matter what it's population is.

Is that correct?

Sent from my iPhone

On Sep 22, 2015, at 5:42 PM, "Kelley, Jeff" <[kelley.jeff@epa.gov](mailto:kelley.jeff@epa.gov)> wrote:

Curt, here are answers to the questions you sent last week:

## **Question 1**

***During the first round of LCR compliance testing the city of Flint MI sampled 100 homes. In the second round, in terms of compliance testing, 69 homes were sampled. It is my understanding that the city was supposed to re-test the same 100 homes, but the***

***Michigan Department of Environmental Quality said that, because Flint's population was below 100,000 only 60 homes needed to be tested. Is such a reduction of home samples allowable under LCR rules after a high number of homes had been tested in the first round? If it is not allowable, what is the potential penalty.***

Answer

For reference, here's a link to the Monitoring Requirements for Lead and Copper in Tap Water from the Lead and Copper Rule regulation →

<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=653576f1ea0a0c1368ec8eda1af41d24&mc=true&n=sp40.23.141.i&r=SUBPAR>

Under the Lead and Copper Rule [per 40 CFR 141.86(c)], the required number of lead tap samples in any compliance period is based on the population served, as follows:

<image001.png>

So, if a water system's population served is between 10,001 and 100,000 people, then 60 sites would be required for compliance sampling under the Lead and Copper Rule.

**Question 2**

***Instead of re-sampling the same 100 homes tested during the first round (July-Dec. 2014) the city re-tested just 13 of those homes. Is that allowable under LCR? If not, what is the penalty?***

Answer

Under the Lead and Copper Rule, the water system needs to attempt to collect samples from the same locations that were sampled in the past. If the previously sampled locations cannot be sampled, the water system can take samples from other locations that are listed as part of

the sampling pool in its sampling plan. Where a system cannot gain access to a site previously monitored, the system may designate a site which was not sampled during previous monitoring periods, and must include an explanation of why sampling sites have changed (see 141.90(a)(1)(v)).

Applicable rule language follows:

40 CFR 141.86(b)(4):

“A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.”

40 CFR 141.86(a)(1):

“(a) Sample site location. (1) By the applicable date for commencement of monitoring under paragraph (d)(1) of this section, each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (c) of this section. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.”

40 CFR 141.86(a)(3):

“(3) The sampling sites selected for a community water system's sampling pool (“tier 1 sampling sites”) shall consist of single family structures that:

- (i) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or
- (ii) Are served by a lead service line. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.”

40 CRF 141.90(a)(1)(v):

“(v) With the exception of initial tap sampling conducted pursuant to § 141.86(d)(1), the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;”

### **Question 3**

*Two sampling cites, one a home and one a business were over the lead action level of 15 ppb but were deleted from the final list used by the MDEQ to affirm compliance. One home had a whole house filter, but according to the homeowner was instructed by the city to disable the filter before conducting the test. The other place was a business.*

*Was it proper to delete those two places from the final list of 69 homes used to calculate whether the city was in compliance?*

### **Answer**

A business should not be used as a sample site. The LCR lists single family homes as the highest priority for sampling sites, but also allows the use of multi-family buildings where they comprise at least 20 percent of the structures in the City (see 141.86(a)(3)).

Regarding the home with the whole-house filter, compliance samples are not allowed to be collected from sites that have point-of-entry devices in place that remove inorganic contaminants. EPA is currently reviewing this specific site's situation internally.

Applicable rule language follows:

40 CFR 141.86(a)(1):

“(a) Sample site location. (1) By the applicable date for commencement of monitoring under paragraph (d)(1) of this section, each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (c) of this section. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.”

40 CFR 141.86(a)(3):

(3) The sampling sites selected for a community water system’s sampling pool (“tier 1 sampling sites”) shall consist of single family structures that: (i) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or (ii) Are served by a lead service line. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

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**Jeff Kelley**  
*Director, Office of External Communications*  
*U.S. EPA Region 5*  
*ph: 312-353-1159*

**From:** Curt Guyette [<mailto:cguyette@aclumich.org>]  
**Sent:** Friday, September 18, 2015 10:38 AM  
**To:** Peterson, John  
**Subject:** RE: Lead and Copper Rule Compliance testing questions

1. During the first round of LCR compliance testing the city of Flint MI sampled 100 homes. In the second round, in terms of compliance testing, 69 homes were sampled. It is my understanding that the city was supposed to re-test the same 100 homes, but the Michigan Department of Environmental Quality said that, because Flint’s population was below 100,000 only 60 homes needed to be tested.

Is such a reduction of home samples allowable under LCR rules after a high number of homes had been tested in the first round?

If it is not allowable, what is the potential penalty.

2. Instead of re-sampling the same 100 homes tested during the first round (July-Dec. 2014) the city re-tested just 13 of those homes.

Is that allowable under LCR?

If not, what is the penalty?

3. Two sampling cites, one a home and one a business were over the lead action level of 15 ppb but were deleted from the final list used by the MDEQ to affirm compliance. One home had a whole house filter, but according to the homeowner was instructed by the city to disable the filter before conducting the test. The other place was a business.

Was it proper to delete those two places from the final list of 69 homes used to calculate whether the city was in compliance?

You can reach me at [313-578-6834](tel:313-578-6834) if you need more information from me.

I am working on a deadline and would need a reply by mid-day Monday.

**From:** Peterson, John [<mailto:peterson.john@epa.gov>]  
**Sent:** Friday, September 18, 2015 11:14 AM  
**To:** Curt Guyette; Arcaute, Francisco; Cassell, Peter; Singer, Joshua  
**Cc:** Kelley, Jeff  
**Subject:** RE: Lead and Copper Rule Compliance testing questions

Hello Curt,

I'm the acting R5 public affairs section chief while Anne Rowan is out on a family emergency. Peter is our usual water person but he's out today. Joshua and Francisco don't handle water issues.

Can you send me your written questions? I can then try to have an expert look at them.

Thanks,

- john

John Peterson

Public Affairs

U.S. EPA Region 5

Chicago, IL

312-886-9858

708-334-7594



**From:** Curt Guyette [<mailto:cguyette@aclumich.org>]  
**Sent:** Friday, September 18, 2015 9:57 AM  
**To:** Peterson, John; Arcaute, Francisco; Cassell, Peter; Singer, Joshua  
**Subject:** Lead and Copper Rule Compliance testing questions

I have some Lead and Copper Rule compliance testing questions and need to talk to someone. Who should I direct my questions to?

Curt Guyette